

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MICHAEL D. BOWMAN,

Plaintiff,

v.

Civil Action No. 5:19CV231
(STAMP)

PANEPINTO LAW OFFICES,
and MARK D. PANEPINTO,

Defendants.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Background

The pro se plaintiff, Michael D. Bowman, filed a civil action against the above-named defendants asserting claims of legal malpractice and breach of fiduciary duty. ECF No. 1. In his complaint, plaintiff claims that Mr. Panepinto was appointed to represent plaintiff in two Marshall County criminal matters: 15-F-59 and 15-F-60. Plaintiff alleges that Mr. Panepinto committed malpractice during his representation of plaintiff in that Mr. Panepinto became aware during the voir dire portion of the underlying criminal trial that the grand jury foreperson did not sign the True Bill of Indictment against plaintiff. Plaintiff alleges that the Marshall County Prosecutor signed the True Bill and that, despite this knowledge, Mr. Panepinto took no action on his behalf. Plaintiff further alleges that Mr. Panepinto breached his fiduciary duty. Plaintiff also claims that his conviction and

confinement in prison are the result of Mr. Panepinto's alleged malpractice.

United States Magistrate Judge James P. Mazzone made a preliminary review of the complaint (ECF No. 1) in considering the pending motion for leave to proceed in forma pauperis (ECF No. 2) to determine whether the pro se complaint sets forth any viable claims pursuant to 28 U.S.C. § 1915(e)(2)(B). Magistrate Judge Mazzone then issued a report and recommendation (ECF No. 8) finding that plaintiff's complaint is frivolous and recommending that the complaint be dismissed without prejudice and the motion to proceed in forma pauperis be denied as moot. The plaintiff did not file objections to the magistrate judge's report and recommendation.

II. Applicable Law

As there were no objections filed to the magistrate judge's recommendation, the findings and recommendation will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

III. Discussion

This Court, after a review for clear error, finds no clear error in the determinations of the magistrate judge and adopts and affirms the report and recommendation (ECF No. 8) in its entirety.

This Court finds that the magistrate judge correctly found no merit in plaintiff's complaint alleging malpractice. After liberally construing the plaintiff's complaint, the magistrate

judge found that this Court does not have subject matter jurisdiction over this case. ECF No. 8 at 4. The magistrate judge correctly found plaintiff has not alleged a claim that would entitle him to relief under the United States Constitution or any federal statute, and has not provided any evidence or indication that the parties are citizens of different states and the amount in controversy exceeds \$75,000.00 exclusive of interests and costs to satisfy the requirements of diversity jurisdiction.

Finally, this Court finds that the petitioner was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action would result in a waiver of appellate rights. Because the petitioner has failed to object, he has waived his right to seek appellate review of this matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

This Court finds no clear error in the above determinations of the magistrate judge and thus upholds his report and recommendation.

IV. Conclusion

Accordingly, after a review for clear error, the report and recommendation of the magistrate judge (ECF No. 8) is AFFIRMED and ADOPTED in its entirety. The plaintiff's complaint (ECF No. 1) is DISMISSED WITHOUT PREJUDICE and the motion to proceed in forma pauperis (ECF No. 2) is DENIED AS MOOT. It is further ORDERED that

this case be DISMISSED and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se petitioner by certified mail to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: September 13, 2019

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE